S.B. CIVIL WRIT PETITION NO. 160/2006.
(MASHOOQ ALI & ORS. VS. STATE)

DATE OF ORDER : 13.10.2006.

HON'BLE MR. GOVIND MATHUR, J.

Mr. Devendra Singh for the petitioners.
Mr. Shyam Ladrecha, AGA, for the respondent.

By the order dated 30.01.2004, a minor penalty was imposed upon the petitioners i.e. a recovery of a sum of 23,920/-. Being aggrieved by the order dated 30.01.2004, the petitioners preferred an appeal under Rule 23 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 before the Director, Technical Education, Government of Rajasthan, Jodhpur. It is stated by counsel for the petitioner that the appeal so preferred is still pending and the respondents have already recovered the substantial amount in pursuant to the order dated 13.01.2004. By this petition for writ, a direction is sought by the petitioners for Director, Technical Education to dispose of the appeal.

A reply to the writ petition has been filed on behalf of the respondents stating therein that the petitioners by way of filing a civil suit before the Court of learned Civil Judge (Junior Division), Bikaner has also given challenge to the order dated 30.01.2004 and looking to pendency of the suit, the aforesaid appeal was not considered and decided by the appellate

authority.

The factum of filing the suit has not been denied by the petitioners. However, it is stated by learned counsel for the petitioners that if the respondents decide the appeal preferred by the petitioners, they will withdraw the suit giving challenge to the order dated 30.01.2004 with liberty to challenge the order passed by the appellate authority if so required.

Heard learned counsel for the parties.

The pendency of the civil suit preferred by the petitioners giving challenge to the order dated 30.01.2004 by way of filing a civil suit is not at all an impediment for appellate authority to decide the appeal preferred by the petitioners. The appellate authority is required to exercise powers under Rule 23 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958. Such powers are absolutely independent and pendency of the civil suit is having no concern in disposal of the appeal.

As such, this petition for writ is allowed. The Director, Technical Education, Government of Rajasthan, Jodhpur is directed to decide the appeal preferred by the petitioners giving

challenge to the order dated 30.01.2004 within a period of one month from today without being impressed by the pendency of the suit preferred by the petitioners before the court of the learned Civil Judge (Junior Division), Bikaner. The appellate authority shall consider all the contentions raised by the petitioners in memo of appeal and decide the same in accordance with Rule 30 of the Rules of 1958.

No order to cost.

(GOVIND MATHUR)J.

Anil/